

General terms of business, delivery and payment of Fogra Forschungsinstitut für Medientechnologien e.V. (Research Institute for Media Technologies), Einsteinring 1a, 85609 Aschheim b. München, Germany

I. Area of applicability, conclusion of contract

1. These conditions apply to businesses as laid down by § 14 BGB (German Civil Code).
2. Purchase orders are carried out solely on the basis of the following conditions. Any provisions deviating, contradicting, or supplementing these conditions made by the customer shall not form part of the contract unless the contractor agrees to them in writing. The contractor is not liable for information given orally.
3. In so far as the following conditions contain an exclusion or a limitation of liability of the contractor, its legal representative or agents for damages, this exclusion or limitation shall not apply to damages due to injury to life, the body or health.
4. With the foregoing exception (3), liability is limited to the sum of € 500,000.00. A higher liability may be agreed.

II. Prices

1. The prices stated in the contractor's quotation are applicable provided that the purchase order data on whose basis the quotation was submitted remain unchanged, but this provision applies for no longer than three months after the client has received the quotation. The contractor's prices apply ex-works and they exclude: Value Added Tax, insurance, packaging, postage, carriage and other transport costs.
2. The extent of the work to be performed by the contractor will be stipulated in writing when the purchase order is placed. If alterations or extensions of the stipulated scope of the purchase order should arise in connection with the due fulfilment of the purchase order, those alterations or extensions are to be additionally agreed upon in writing in advance. In this event, the client has the right to withdraw from the contract if, in view of the alterations or extensions, he can no longer be reasonably expected to adhere to the contract. However, in accordance with § 649 BGB (German Civil Code) the client is to pay the agreed remuneration, or an appropriate remuneration if there has been no such agreement.

III. Payments

1. Payment, without any deductions, is to be made immediately upon receipt of the invoice. Any discount agreement that may exist does not apply to carriage, postage, insurance or transport costs.
2. If an unusual amount of goods or services is delivered in advance, an appropriate advance payment can be demanded.
3. The client can only set off an amount against an undisputed debt or a debt established by the force of law. A client who is a full trader as defined in the HGB (commercial code) has no rights of retention. However, the rights under § 320 BGB (German civil code) are preserved provided and to the extent that the contractor has not fulfilled his obligations under Section VI. 3. of the present terms of business.
4. In addition to instances where there are grounds for uncertainty (§ 321 BGB / German Civil Code), the contractor may exercise a right of retention if the client is in arrears in payment for deliveries that are based on the same legal relationship.
5. In the event of delay in payment, interest on arrears is payable at 8% above the base rate of interest. This does not exclude the assertion of further loss arising from delay.

IV. Delivery

1. If the contractor has undertaken to provide the transport, he will provide for the client with the necessary amount of care, but will be liable only for intent and gross negligence. The risk involved passes to the client as soon as the consignment has been handed to the person carrying out the transport.
2. Delivery deadlines are only valid if the contractor expressly confirms them. If the contract is concluded in writing, confirmation of the delivery deadline must also be given in writing.
3. Should the contractor be late, the contractor is initially to be granted an appropriate period of grace. Following the expiry of the period of grace to no effect, the client may withdraw from the contract. Section VIII of these conditions applies.
4. Disturbances on the business premises – whether those of the contractor or those of a supplier – in particular strike, lockout and all other cases of force majeure, do not justify the termination of the contractual relationship. The principles concerning the disappearance of the basis for the business remain unaffected.

5. In accordance with § 369 HGB (commercial code), the contractor has a right to retain any printed submissions, stamped submissions, manuscripts, raw materials and other objects which have been delivered by the client, until all the amounts owed which are due as a result of the business relationship have been settled in full.
6. In accordance with the packaging ordinance, transport and other packaging will not be taken back, with the exception of palettes. The client is liable for the disposal of packaging at its own expense.

V. Retention of ownership

The delivered goods or expert opinions remain the property of the contractor until payment in full by the client of all debts existing at the date of invoice.

VI. Complaints, guarantees

1. In each individual instance it is for the client to examine whether the delivered goods or expert opinion complies with the contract.
2. Complaints should be submitted promptly and in writing upon receipt of the goods or expert opinion. Notification of hidden defects should be made promptly as soon as they become apparent.
3. Should the services of the contractor prove to be defective, the contractor shall initially have the opportunity or – depending upon the type of service – opportunities to eliminate the defect preventing fulfilment either by subsequent making good or supply of a replacement at the discretion of the contractor.
4. Should the contractor decline to make good or the subsequent making good fails or is not acceptable to the client, the client, at its discretion, can either withdraw from the contract or demand the reduction of the amount due (reduction) or damages. The right to withdraw can only be exercised in the event of a substantial defect. It lapses in the event that the client does not give notice of withdrawal within 14 days at the latest of the communication of the refusal to make good or the failure to make good or within 14 days at the latest of the date on which it becomes clear that the making good is not acceptable to the client. The contractor shall only pay damages in the event of the further provisions of section VIII 2 and also – if the contractor has declined to make good – section VIII. 3.
5. Deficiencies in one part of the delivered goods or expert opinion do not justify a complaint against the entire delivery.
6. In the event of deviations in the composition of the materials employed, the contractor shall only be liable therefor to the extent of its own claims against the particular supplier. In such an instance the contractor is released from its liability if the contractor assigns to the client its claim against the supplier. The contractor is liable if, due to the fault of the contractor, claims against the supplier do not exist or are not enforceable.
7. Material (including data carriers) delivered by the client or by a third party working on its behalf do not have to be examined by the contractor unless it is incumbent upon contractor on the grounds of experience with the delivered material, intention or gross negligence.
8. Claims on the grounds of defects lapse in accordance with section XIII.

VII. Expert opinions, inventions

1. The publication of expert opinions and their use in a court of law requires the approval of Fogra. In the same way Fogra has to approve the disclosure of extracts from expert opinions to third parties. Material whose return is not expressly requested will be destroyed 3 months after the expert opinion has been submitted.
2. The contractor and its staff shall be obliged, upon the written request of the client, to maintain silence regarding trade secrets or any other circumstances concerning the client about which information is obtained in connection with the purchase order. This shall not preclude the contractor or its staff from making scientific use of and publishing any results obtained as a result of the purchase order. However, the contractor undertakes to refrain from making any reference to the client and its concerns.
3. Inventions and suggestions for improvement and commercial protective rights separately granted for these remain the property of the contractor irrespective of the nature and scope of and remuneration for the purchase order.

VIII. Liability

1. The contractor is responsible for taking scientific care as well as for abiding by the generally acknowledged rules of the technology.
2. The liability of the contractor, its legal representative and agents for breach of duty and offences is limited to intention and gross negligence. In the event of breaches of duties that are fundamental to the contract (cardinal duties), the contractor, its legal representative and agents shall also be liable for lesser negligence. In any even the liability is limited to foreseeable damages typical for the contract.
3. If the contractor fails to provide the service incumbent upon it, does not provide it by the due day or does not provide it in the way that it is due, the client may only demand damages instead of the performance of the service if it has granted to no effect the contractor a reasonable period of grace to provide the service and has specifically stated that it will decline to accept the service after the expiry of the period of grace.

IX. Periodic work

Contracts for regularly recurring work can be terminated to finish at the end of a month with at least 3 months notice.

X. Commercial protective rights and Copyright

The client is solely liable if rights, in particular the copyrights of third parties, are violated by the fulfilment of its purchase order. The client absolves the contractor from all claims made by third parties regarding such a violation of rights.

XI. Trade name

The contractor may display its name in an appropriate way on the products resulting from the contract. The client can only refuse to give consent if it has an overwhelming interest in doing so.

XII. Waste disposal

The client agrees that submitted material (eg. unprinted or printed paper, inks, etc.) will normally be disposed of 3 months after the submission of the Expert Opinion by the contractor by means of local government enterprises (eg. paper bins). Should the client not wish this to happen, it must notify the contractor in writing thereof. The material will then be returned at the expense of the client.

XIII. Limitation of Liability

1. The claims of the client for breach of duty and offence lapse after 12 months. This shall not apply in so far as the law in §§ 438 Abs. 1 Nr. 2, 479 Abs. 1 (recourse claim) and 634 a Abs. 1 Nr. 2 1. Alternative (building defects) BGB specifies longer periods or the contractor is liable due to intent or gross negligence.
2. Negotiations between the parties to the contract over claims or the circumstances based on the claim extend the period of limitation. This effect shall cease when one party to the contract does not respond to the wish of the other to proceed through negotiations within 4 weeks.

XIV. Place of fulfilment, place of jurisdiction, effectiveness

1. The place of fulfilment and jurisdiction for all obligations arising from the contract is Munich.
2. The place of jurisdiction for the assertion of claims for both contracting parties is Munich, provided that the requirements under § 38 ZPO (code of civil procedure) are met. This applies in particular to proceedings for debt.
3. The contractual relationship and all the legal relationships arising from it are exclusively subject to German law. The UN law of purchase is not applicable.
4. If one or more of the provisions should be ineffective, this will not touch upon the effectiveness of the remaining provisions.